

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 MOTOROLA SOLUTIONS, INC.,) Docket No. 17 CV 1972
5)
6 Plaintiff,)
7) Chicago, Illinois
8 vs.) August 15, 2019
9) 9:45 o'clock a.m.
10 HYTERA COMMUNICATIONS)
11 CORPORATION, LTD., et al.,)
12 Defendants.)

13 TRANSCRIPT OF PROCEEDINGS - Status
14 BEFORE THE HONORABLE JOHN ROBERT BLAKEY

15 APPEARANCES:

16 For the Plaintiff: KIRKLAND & ELLIS
17 BY: MR. MICHAEL W. DeVRIES
18 333 South Hope Street
19 Suite 2700
20 Los Angeles, California 90071
21
22 KIRKLAND & ELLIS
23 BY: MR. ADAM R. ALPER
24 555 California Street
25 27th Floor
 San Francisco, California 94104
26 For the Defendants: CALFEE HALTER & GRISWOLD LLP
27 BY: MR. JOHN S. CIPOLLA
28 1405 East Sixth Street
29 Cleveland, Ohio 44114
30
31
32 LAURA LACIEN, CSR, RMR, FCRR, CRR
33 Official Court Reporter
34 219 South Dearborn Street, Suite 1212
35 Chicago, Illinois 60604
36 (312) 408-5032
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840

1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 17 C 1972, Motorola Solutions
3 versus Hytera Communications.

4 THE COURT: Good morning, counsel. Appearances.

5 MR. DeVRIES: Good morning, your Honor. Mike
6 DeVries --

7 MR. ALPER: Good morning, your Honor.

8 MR. DeVRIES: -- and Adam Alper on behalf of the
9 plaintiff Motorola Solutions.

10 MR. CIPOLLA: John Cipolla here on behalf of the
11 Hytera defendants.

12 THE COURT: Are we able to set case management dates
13 today?

14 MR. DeVRIES: Your Honor, we have conferred. The
15 primary area of dispute between the parties is when the trial
16 date should be -- what trial date we should be working
17 towards. Before the stay was entered at the end of March,
18 we -- the parties had submitted a joint schedule working
19 towards a March 2020 trial date. We know that your Honor in
20 the March hearing indicated that the stay would not impact
21 that trial date.

22 Motorola's position is that the trial should proceed
23 in March. We've conferred and we understand that Hytera's
24 position is that it should proceed in August. However, I
25 believe based on the discussions that there may be some

1 middle ground to be reached; and perhaps if your Honor is
2 able to let the parties know the Court's availability for a
3 trial in perhaps May or early June, we are confident that we
4 can work back from there to submit an agreed schedule to the
5 Court within the next several days and that's something that
6 we discussed with counsel for Hytera, that if the Court
7 provides the parties with guidance about what trial date we
8 should work towards, we're confident we can submit an agreed
9 schedule, of course subject to your Honor's approval.

10 THE COURT: Is that your thoughts?

11 MR. CIPOLLA: Your Honor, you know, I'd like to
12 argue in favor of the August trial date. When the Court
13 indicated it would set dates and not move the trial date, the
14 date set for -- by which the motion to dismiss was going to
15 be decided was May 9th if you read your transcript of that
16 hearing, and the decision didn't come down until this August
17 and so we've lost three months there. And there's no way --
18 and I've been doing this for 30 years -- that we can get the
19 seven patents done on 57 now alleged infringing products done
20 in six months.

21 We think August is do-able, although it's going to
22 be really tough. I normally would think that a year and a
23 half, two years to get it to a trial on this but, you know,
24 August, I think looking at the schedule, the local rule --
25 patent rules and what we have to do, that's reasonable. And

1 more than that, I don't think it prejudices Motorola in any
2 way.

3 May 15th is when they filed their amended complaint
4 based on our first motion to dismiss and they added about 40
5 new pages of subject matter to that complaint. It's now like
6 90 pages long and they add approximately 30 new products so
7 now we have 57 new products at issue. Motorola served
8 infringement contentions actually before they filed their
9 amended complaint that didn't address any of the new products
10 that are in the amended complaint so we don't even know how
11 they're alleging infringement of that.

12 And more than that, the -- all the products that
13 were in the first complaint, they've already been enjoined by
14 the ITC. They're not for sale anymore so there's no -- no
15 real harm to Motorola and there's no pending preliminary
16 injunction or allegation of irreparable harm. Money damages
17 for three or four more months of alleged infringement would
18 adequately compensate them.

19 Meanwhile my client, this I-Series, the new products
20 that are alleged, is very important. That product was
21 actually blessed by the ITC. They withdrew all the patents
22 infringing -- alleged to infringe on these new products
23 except for one which the ITC found not to be infringed. And
24 so we don't think -- that is a very important set of products
25 for us. We'd like to be able to present an adequate defense.

1 And if you compress the schedule beyond August, we think
2 we're going to be severely prejudiced. So I really don't
3 think, you know, June versus August is that big of a deal.

4 And I do agree with Mr. DeVries that once we get
5 the trial date target, we'll be able to agree by next
6 Wednesday. We'll submit something to the Court on the rest
7 of the scheduling dates.

8 THE COURT: Anything else, counsel?

9 MR. DeVRIES: Yes. I just need to correct something
10 which is that the I-Series products that was -- that counsel
11 refers to, they were provided in our infringement contention
12 so it's inaccurate to say that they weren't. They were
13 included in our infringement contentions. We provided that
14 when the case was unstayed by your Honor in February. We
15 proceeded with discovery at that time and it was only three
16 days before the invalidity contentions were due that the case
17 was stayed again.

18 And I'm sure your Honor has this in mind but these
19 patents, all seven of them, were almost fully litigated in
20 the ITC claim construction, expert discovery for four of the
21 seven that actually proceeded to a hearing. We fully
22 recognize that those determinations are not binding on your
23 Honor but we've reached a cross-use agreement which was
24 entered by your Honor during the time the case was unstayed
25 so that all the materials in discovery from those proceedings

1 are available here. And we would -- Motorola Solutions
2 definitely would be irreparably harm. We've been asking to
3 proceed as quickly as possible.

4 When your Honor stayed the case again in March, we
5 indicated that our belief was that the motion to dismiss
6 would be denied. We thought that the stay should not
7 continue and so we do think that having them continue to sell
8 our patented technology as their I-Series products does
9 causes irreparable harm. This is a competitor dispute. It's
10 been pending since March of 2017 and we are very anxious to
11 get to trial as quickly as possible.

12 Final update just in case this didn't come up in the
13 last discussion, the IPRs that Hytera was using to ask your
14 Honor to stay the case when they made that request in
15 November of last year, again in February of this year and
16 then again in March, all three of those IPRs had been
17 decided. All three of those were favorable to Motorola. All
18 of the claims were confirmed in two. Some of the claims were
19 confirmed in the third. Hytera is now estopped from
20 asserting prior art invalidity. That's within the scope of
21 that estoppel for all three of those patents and there is no
22 further ability on the part of Hytera to file IPRs in any of
23 the remaining patents.

24 And so the case really is -- although there are
25 seven patents, a lot has been done and I think we are in a

1 position to very easily frankly get to a March trial date of
2 next year or something very close to that.

3 THE COURT: Anything else, counsel?

4 MR. CIPOLLA: Yes. I strongly dispute that more
5 than three of the patents were actually litigated to
6 conclusion are under claim construction. They were withdrawn
7 from the ITC except all but three. And I have not seen any
8 infringement allegations on the I-Series and, in fact, I
9 asked counsel whether he's going to submit some and he didn't
10 know, some new infringement contentions before today's
11 hearing, your Honor.

12 THE COURT: How long do you need to file an answer?

13 MR. CIPOLLA: What's that?

14 THE COURT: How long do you need to file an answer?

15 MR. CIPOLLA: We talked about that, your Honor --

16 THE COURT: Can you get it done by September 16?

17 MR. CIPOLLA: We were going to try to shoot for
18 August -- actually the end of the week of -- or before Labor
19 Day, your Honor, which I believe is August 28th.

20 THE COURT: Okay. Is that a realistic date? Can
21 you get it done by then?

22 MR. CIPOLLA: Yes.

23 THE COURT: August what?

24 MR. CIPOLLA: 28th.

25 THE COURT: All right. Oral motion to file answer

1 on or before August 28th is granted. I'm listening to
2 defense counsel's argument and it's making a lot of sense to
3 me. There's a lot left to do in the case. I don't think
4 we're going to make that trial date. I don't think it's
5 accurate. It did take me longer than expected because things
6 sometimes take longer than expected to get to certain things.
7 So I'm going to strike the March trial date and I'm going to
8 enter a schedule that's more consistent with the local rules,
9 local patent rules.

10 Teeing off this answer, I still think there's
11 infringement contention issues that are unresolved so we got
12 a lot of work to do. We're not going to make a March trial.
13 So I realize that's not preferable but it's -- you have to do
14 it right; not fast, so. I'm going to enter an order and be
15 consistent with the local rules.

16 If you have any -- there's going to be a lot of
17 dates in it obviously, more than I'm going to put on the
18 record right now in light of the fact there's other attorneys
19 waiting. If there's any specific issues with the dates, meet
20 and confer, call my courtroom deputy. If you want to make a
21 modest adjustment to the dates, like a hearing date, I've got
22 family vacation or something like that, just let me know.
23 Otherwise, I'll enter an order based on the new answer date.

24 Anything else, counsel?

25 MR. DeVRIES: No, your Honor.

1 MR. CIPOLLA: No, your Honor.

2 THE COURT: All right. Thanks.

3 MR. CIPOLLA: Thank you.

4 (Which concluded the proceedings in the above-entitled
5 matter.)

6 C E R T I F I C A T E

7 I hereby certify that the foregoing is a transcript
8 of proceedings before the Honorable John Robert Blakey on
9 August 15, 2019.

10

11 /s/*Laura LaCien*

12 _____
13 Laura LaCien
14 Official Court Reporter

15 August 22, 2019
16 Date

17

18

19

20

21

22

23

24

25